with a statute requiring every ship to accept a pilot's services. *The Carrie L. Tyler*, 106 Fed. 422. It is to be hoped that the doctrine of the second circuit, adopted by the principal case, will ultimately prevail. A doctrine of imputed negligence is as much out of place in admiralty as it is in the common law.

ANIMALS — DAMAGE TO PERSONS AND CHATTELS BY ANIMALS — HORSE STRAYING ON THE HIGHWAY. — The plaintiff's automobile was damaged in a collision with the defendant's horse which was at large in the highway adjoining the defendant's land. The defendant owned to the center of the road. It was not shown that the defendant knowingly permitted his horse to be there, or that he had knowledge of any quality in the horse that would make such a collision especially probable. The lower court granted a nonsuit. *Held*, that this was not error. *Dyer* v. *Mudgett*, 107 Atl. 831 (Me.).

Where a local statute or ordinance forbids the presence of stray animals in the highway, the case would turn on whether the statute was intended merely to prevent trespasses, or to protect travelers as well. *Marsh* v. *Koons*, 78 Ohio St. 68, 84 N. E. 599. *Cf. Decker* v. *McSorley*, 111 Wis. 91, 86 N. W. 554. In the absence of such statutes, some jurisdictions hold that it is not wrongful for the animal to be on the highway, and thus reach the result of the principal case. *Holden* v. *Shattuck*, 34 Vt. 336; *Brady* v. *Straub*, 177 Ky. 468, 197 S. W. 938; *Higgins* v. *Searle*, 25 T. L. R. 301. But in other states the contrary view is held. *Leonard* v. *Doherty*, 174 Mass. 565, 55 N. E. 461; *Barnes* v. *Chapin*, 4 All. (Mass.) 444; *Baldwin* v. *Ensign*, 49 Conn. 113. It would seem possible to subject an animal straying in the highway to the same rules as an animal trespassing on private land. See 32 HARV. L. REV. 420. But since the courts do not proceed on this theory the defendant's ownership of part or all of the highway becomes immaterial. In other cases the courts have not considered the presence of the animal in the highway, and have excused the owner from liability on the basis of the unforeseeable nature of the accident. *Earl* v. *Van Alstine*, 8 Barb. (N. Y.) 630; *Maloney* v. *Bishop & Bridges*, 105 N. W. 407 (Iowa); *Heath's Garage* v. *Hodges*, 32 T. L. R. 134. It is to be noted that the doctrine of scienter does not properly belong in these cases. *Scienter* has to do with the probability of an animal acting contrary to the normal nature of his kind; whereas in these cases it is a question of the probability of any animal of a certain kind acting in the way that the defendant's animal actually did. See *Klenberg* v. *Russell*, 125 Ind. 531, 25 N. E. 596; *Earl* v. *Van Alstine*, *supra*.

BANKRUPTCY — DISCHARGE — BURDEN OF PROOF IN ATTACKING DISCHARGE. — The defendant had sold an automobile to the plaintiff, making certain express representations concerning it, and agreeing that if it did not fulfill these representations he would refund the money. The plaintiff had returned it, and upon refusal by the defendant to refund the money had obtained a judgment for the same, the jury finding the above facts to be true. The defendant then became bankrupt and the plaintiff proved the judgment and received dividends. Having received his discharge in bankruptcy, the defendant now sought to have the judgment discharged. The plaintiff opposed on the ground that it had been based on a liability for obtaining property by false pretenses and hence was not discharged under Section 17 *a* (2) of the Bankruptcy Act. *Held*, that the judgment be discharged. *Guindon* v. *Brusky*, 43 Am. B. R. 263 (Minn.).

A discharge in bankruptcy releases the bankrupt from all provable debts except those specified in Section 17 of the Bankruptcy Act. *Bluthenthal* v. *Jones*, 208 U. S. 64. The discharge does not automatically relieve the bankrupt, however, and its effect upon a particular debt is to be determined by the court in which an action thereon arises. *In re Weisberg*, 253 Fed. 833; *In re Lockwood*, 240 Fed. 161. The burden of establishing is on the creditor, who

seeks to bring his claim within one of the exceptions. *Bluthenthal* v. *Jones, supra; In re Miller*, 212 Fed. 920. Where the debt is a judgment, the court will look behind that in order to see upon what the judgment is based. *Bullis* v. *O'Beirne*, 195 U. S. 606; *Forsyth* v. *Vehmeyer*, 176 Ill. 359, 52 N. E. 55, affirmed in 177 U. S. 177. However, in determining this question, only the records of the case are available and admissible. *Bullis* v. *O'Beirne, supra; Burnham* v. *Pidcock*, 58 App. Div. 273, 68 N. Y. Supp. 1007. A claim on an express warranty is essentially a claim arising out of a contract. *Frederic L. Grant Shoe Co.* v. *Laird Co.*, 212 U. S. 445. Where it is doubtful whether it was based on contract or on fraud, the creditor has not sustained his burden of proving the claim to be within the excepted class and hence it is discharged. *Cooke* v. *Plaisted*, 181 Mass. 82, 62 N. E. 1054; *Hallagan* v. *Dowell*, 179 Iowa, 172, 161 N. W. 177. This seems to be the situation in the principal case.

BANKRUPTCY — FRAUDULENT CONVEYANCES — RIGHTS OF SUBSEQUENT CREDITORS WHEN NO FRAUD AS TO THEM. — A trustee in bankruptcy, proceeding under § 70 e of the Bankruptcy Act of 1898, had imposed a charge on certain property, fraudulently conveyed only as to existing creditors. The amount of the charge had been paid to the trustee, and the only existing creditor petitioned that the whole amount be paid over to him. The petition was denied. *Held*, that the judgment be reversed. *American Trust & Savings Bank* v. *Duncan*, 43 Am. B. R. 7 (Circ. Ct. App.).

A trustee in bankruptcy, suing under § 70 *e* of the Bankruptcy Act of 1898, to set aside a conveyance, fraudulent only as to existing creditors, did not in his bill give the names of the existing creditors. The conveyance was set aside. *Held*, that the decree be sustained. *Riggs* v. *Price*, 43 Am. B. R. 413 (Mo.).

The right of subsequent creditors to set aside conveyances is variously made to depend upon fraud as to them and fraud as to existing creditors. *Harlan* v. *Maglaughlin*, 90 Pa. 293; *Ebbitt* v. *Dunham*, 25 Misc. 232, 55 N. Y. Supp. 78. But where the subsequent creditor cannot set aside the conveyance, he should not participate in the proceeds in case one with a better right does set it aside. *Lee* v. *Hollister*, 5 Fed. 752. See *Gardner* v. *Kleinke*, 46 N. J. Eq. 90, 94, 18 Atl. 457, 459. However, the rights of subsequent creditors, when the debtor becomes bankrupt, have been in effect increased by the Bankruptcy Act. The trustee, it would seem, acts for the benefit of all the creditors and not for the benefit of a particular creditor. See *In re Rodgers*, 125 Fed. 169, 180. Thus, where a creditor holds a note, in which the bankrupt has waived certain exemptions for the benefit of the creditor, the trustee will not act for that creditor on the waiver of exemption. *Lockwood* v. *Exchange Bank*, 190 U. S. 294. Again, § 67 f of the Bankruptcy Act, which avoids all liens obtained through legal proceedings within four months prior to the petition unless the court orders the lien preserved for the benefit of the estate, is interpreted as meaning that when the lien has been so preserved, the distribution of the proceeds is not confined to the existing creditors. *First National Bank* v. *Staake*, 202 U. S. 141; *Globe Bank, etc.* v. *Martin*, 236 U. S. 288. See 28 HARV. L. REV. 703. Section 70 *e* provides that the trustee may set aside a conveyance which any creditor might have avoided. Neither § 67 *f* nor § 70 *e* prescribes a distribution of proceeds which come into the trustee's hands as a result of his succeeding to the creditor's rights, but it would seem that the trustee is acting for the benefit of all the creditors, as well under § 70 *e* as under § 67 *f*. If *American Trust & Savings Bank* v. *Duncan* is sound, it must follow that existing creditors alone will benefit from a charge imposed through their rights by the trustee, while they will have to share with subsequent creditors in case they have themselves secured a lien, within four months prior to bankruptcy, through legal proceedings. Nothing further than the statement of this result seems necessary to point out the undesirability of the decision.